

[16963] Q. Now, Mr. Uhl, is there reflected in your \$3,300,000 valuation the elements of cost which you just mentioned? A. Yes, sir.

Trial Examiner: Will you read that list of costs, Mr. Reporter?

(Record read by the reporter.)

By MR. HALL:

Q. Now, Mr. Uhl, how much of the \$3,300,000 represents risks of assembling the land? A. I don't know. I have made no attempt to segregate the various things.

Q. Were all the risks that you have in mind incurred prior to March 1, 1905? A. Yes.

Q. What were those risks that you have in mind? A. The risks that I have in mind particularly are that in buying a number of parcels of land with the idea of combining a certain area, you may find that after buying certain ones, you cannot get the rest of them.

Q. Is that involved here? A. Of course, it is involved here, unless you had the right of eminent domain to condemn the rest of the parcels. You wouldn't be sure whether you could get them all or not, and perhaps you might be able to get them at an exorbitant cost. Those are the principal risks, as I see [16964] them, in connection with assembling a series of parcels of land for that purpose.

Q. Were those risks that you have referred to involved in this case, as of March 1, 1905? A. Well, they had previously been.

Q. In connection with what purchases? A. The various parcels of land.

Q. Which ones? A. Any parcels of land. It is always true.

Q. What parcels of land did they have? A. Oh, I didn't investigate how many parcels there were. It is just the general condition that I am talking about.

Q. And I take if you made no detailed investigation to ascertain whether or not these difficulties were actually experienced? A. Well, they must have been if a person—

Q. That is merely speculation on your part, is it not? A. Oh, of course, it is the common occurrence, that is all, and to that extent it is speculation. I didn't investigate this particular case.

Q. Now, do I understand that you cannot give us the amount, included in the \$3,300,000 valuation, as cost of surveys? [16965] A. No, sir. I cannot give you anything except the market value of the whole assembled property. And I wasn't interested in the cost of those various things.

Q. Now, if I understand what you are saying, it is you cannot give us a breakdown for any of the items mentioned previously? A. That is correct.

Q. Have you assumed, for the purposes of your valuation, Mr. Uhl, that all of the elements to which you referred, such as cost of surveys, title searches, options, and so forth, existed in this case as of March 1, 1905?

MR. KING: As of March 1, 1905?

MR. HALL: Yes.

A. No, sir. I assumed that the property was all assembled at that time.

By MR. HALL:

Q. Well, had any legal or court expenses been involved as of that date? A. I don't know, and I didn't care, for the purpose of my valuation.

Q. What contract negotiations had been carried on prior to March 1, 1905?

MR. KING: By whom? Anybody?

MR. HALL: For purchase of power in connection with the water power development at Holtwood.

MR. KING: By anybody?

[16966] MR. HALL: Yes.

A. I can't tell you the details, but the history shows that various people negotiated for the sale of power, and various people were interested in it.

By MR. HALL:

Q. Can you identify those people? A. No, I don't see why I should, for the purpose that I had in mind.

Q. What companies or purchasers were involved in the negotiations for the purchase of power? A. I imagine everybody in the countryside was interested.

Q. You say you imagine they were? A. Yes.

TRIAL EXAMINER: Why did you refer to these various categories of costs in your answer some time previously?

THE WITNESS: Just simply to show, in answer to his question, whether there are any other costs besides the bare cost of land involved.

TRIAL EXAMINER: Well, apparently you had them listed in your notes and working papers.

THE WITNESS: Yes.

TRIAL EXAMINER: Why do they appear in your notes and working papers if, as I understand it, you were not interested in whether they actually existed?

[16967] THE WITNESS: Because I have to talk with other people, I have to put these things clear in my own mind and I write a memorandum to myself. I don't think there is any particular—I say a lot of things which have no particular bearing, except to remind myself when I talk to others about it.

TRIAL EXAMINER: How did you use them in arriving at your \$3,300,000, if at all?

THE WITNESS: Only to this extent: that I knew from experience that they are always to be met with in the combining of a number of parcels of land, a great number of parcels of land, and that there are a good many costs in

volved besides the bare land cost, and we know that that adds to the value.

TRIAL EXAMINER: If you know that, why did you note it? There is an implication that—

THE WITNESS: Well, I have sometimes to educate counsel, you know, and other people in connection with these matters.

TRIAL EXAMINER: What did you do with those notes as to the other categories of costs, beyond the bare cost of land?

THE WITNESS: Well, they are in this memorandum which I consider part of my working papers.

TRIAL EXAMINER: What is the nature of that memorandum?

[16968] **THE WITNESS:** Simply a relation of facts and things that have to do with the valuation of water rights.

TRIAL EXAMINER: What is the title of it?

THE WITNESS: The title is "Estimate of Fair Market Value as of March 1, 1905, of the Lands and Water Rights Acquired to Carry Out the Holtwood Hydroelectric Development of the McCall Ferry Power Company, and now owned by the Pennsylvania Water and Power Company."

TRIAL EXAMINER: Do you have a heading under which these categories of costs, other than bare land costs, appear?

THE WITNESS: No, sir, it is just simply a statement, a paragraph saying, "In addition to the bare cost of land, which is used and useful—" then I mention these.

TRIAL EXAMINER: How do you mention them? Let me have your language.

THE WITNESS: "Used and useful in the development of water power, other factors are involved." Then I go on to say "Cost of surveys, title searches, options," and these

other things that I mentioned previously in the record. It is just a fact, that is all. Just simply a statement of fact, that is all that was involved.

TRIAL EXAMINER: Is that memorandum applied in any detail as to the contents of that passage, to the Holtwood development?

[16969] **THE WITNESS:** No, sir, not at all. There are no calculations in this. It is simply factual data.

TRIAL EXAMINER: What I am trying to discover is whether that is a general statement, applicable to any project, or whether that statement came as a result of a conference that you had with the officers of the Respondent, in which you determined that that generality applied in this case.

THE WITNESS: It is a general statement. It is true, in connection with all similar situations.

TRIAL EXAMINER: Did you ascertain as to whether it applied specifically to Holtwood?

THE WITNESS: No, but I don't see how it could be otherwise. How can anyone assemble parcels of land without surveys, and so forth? I have done it myself, as far as that is concerned. I have done the same thing, I have assembled parcels of land myself, and from my own personal experience, I know it is necessary to do all these things. I have done it personally.

MR. KING: Does your Honor understand that the document to which Mr. Uhl is referring has been furnished to Mr. Goldberg and Mr. Hall as the working papers?

TRIAL EXAMINER: No, I do not.

MR. KING: It has.

TRIAL EXAMINER: Just a minute. You did have some general knowledge of the assembly of these parcels?

[16970] MR. HALL: He stated that he didn't, Mr. Examiner.

MR. SPARKS: What was Mr. Hall's statement?

TRIAL EXAMINER: Did you?

THE WITNESS: No, I said repeatedly that I assumed, on the date of my valuation, which was March 1, 1905, all these things had been done, and this was a property all assembled. How it was assembled, I wasn't interested.

TRIAL EXAMINER: Suppose it wasn't done; suppose this was the one exception! How did you know it was?

THE WITNESS: I just assumed. My valuation is based on the assumption that this was done, that the property was available and could be used for water power purposes. I assumed that. If my assumption is correct, my valuation must be correct.

MR. KING: Your Honor understands that all the facts which the witness stated he assumed, it is Respondent's position, are in the record.

TRIAL EXAMINER: I understand that. I am trying to get at his processes in connection with these other categories of cost.

THE WITNESS: I simply make the statement in my working papers that these are the other costs besides the cost of land and naturally those costs, added to the cost of land itself, are a greater amount than the bare cost of land. That is all I am saying. And these things, the time they take [16971] and the risk they take, are what adds value. Otherwise, why would they do it? Why would assemblies of parcels like that be purchased and sold, as they are?

By MR. HALL:

Q. Mr. Uhl, isn't this a fact: the report which you have been discussing and which the Examiner has asked you about is the report which you prepared as a result of your study and submitted to the company to show the

elements that you considered in arriving at your determination? A. No, sir, it is a report—

Q. Well, now, you give me your description of it.

MR. KING: Let him answer, Mr. Hall.

MR. HALL: He said "No, sir."

MR. KING: He didn't finish.

A. I said no, sir, it is a memorandum that I wrote to myself.

By MR. HALL:

Q. Didn't you submit it to the company? A. I did afterwards. I gave them copies, but the purpose of it was to clarify the situation in my own mind, not in anybody else's mind.

Q. And in your own mind you were stating in that report elements to be considered and which you did consider? A. No, I didn't consider them. I considered they had [16972] been done, but in arriving at my valuation, as of March 1, 1905, I assumed that there was a combination of property in sufficient amount, no matter what it had cost, or how it had been acquired, to make a water power development at that site, with a dam at crest elevation 155. I tried to get at the market value, that a willing purchaser and a willing seller might arrive at, as to the value of it. Somebody would be interested to pay that much money for that assembled property. Somebody might be willing to sell it for that amount of money. Not necessarily even for development, immediate development, it might be somebody who bought it for speculation, which is often done. Complete properties. I have taken part myself in negotiations of that kind.

TRIAL EXAMINER: How did you arrive at your figure of \$3,300,000?

THE WITNESS: By comparing it with actual sales and purchases of other water power rights.

MR. HALL: Would you give us that arithmetic that you used in arriving at that figure?

THE WITNESS: No arithmetic except the multiplication of a certain number of horsepower by a certain figure. I multiplied 165,000 horsepower by \$20 a horsepower, and got \$3,300,000.

By MR. HALL:

[16973] Q. 165,000 horsepower times what? A. \$20 per horsepower.

Q. How did you arrive at that \$20? A. I arrived at that by comparing this property with actual sales and purchases of other water power properties.

Q. What actual sales and purchases are you referring to? A. Those sales mentioned in my direct examination.

MR. KING: And they appear, Mr. Uhl, do they not, beginning on transcript 15447?

THE WITNESS: Yes, 15447, line 23.

By MR. HALL:

Q. When did the actual sales involved in the Clark's Rip on the Androscoggin River take place? A. The first sale of that property was made in 1909. It was again sold in 1924.

Q. What was the price involved in the Clark's Rip on the Androscoggin River? A. \$325,000.

Q. And that was in 1909? A. 1909.

Q. What kind of land was involved? A. Pardon me?

Q. What kind of land was involved? A. River bottom and marginal lands.

[16974] Q. How much was river bottom? A. I couldn't tell you that.

Q. Do you know how much was marginal land? A. I couldn't tell you that.

Q. How much river bottom was involved in the land in the Holtwood project? A. I couldn't tell you that.

Q. Is there any involved? A. Yes, of course.

Q. That was transferred or held at March 1, 1905?

A. Yes.

Q. What parcels? A. I don't know.

Q. How do you know that there were any involved?

A. River bottom?

Q. Yes. A. There had to be. I don't see that it was bought or sold as river bottom, but the area was involved.

Q. Do you mean it had to be involved in the land which was held in 1905 or which you considered? A. Which I considered that they had a right to use.

Q. Was there any consideration involved in the use of the river bottom lands? A. I don't think I understand your question, Mr. Hall.

Q. Was there any cost incurred in connection with [16975] the river bottom lands that you have in mind? A. I don't know.

TRIAL EXAMINER: What was the price of \$325,000 based upon, and who were the parties involved in the sale?

THE WITNESS: The parties involved, Mr. Examiner, the seller was the International Paper Company, and the purchaser was the Union Water Power Company of Lewiston, Maine.

TRIAL EXAMINER: What was the corporate relationship between those two, if any?

THE WITNESS: There was none whatsoever.

TRIAL EXAMINER: What was the basis of the determination of the \$325,000, do you know?

THE WITNESS: Yes. I arrived at that myself in connection with the purchaser. The basis of that is that the possible development of 17,000 horsepower would be made at that river at that time, everything taken into consideration, storage, pondage, and possible use, which amounted to \$19 per horsepower.

TRIAL EXAMINER: I am not sure that this isn't going too far, but how did you arrive at your \$19 per horsepower?

THE WITNESS: By reference to other purchases and sales.

TRIAL EXAMINER: Contemporaneous?

THE WITNESS: Yes, contemporaneous and past—quite a few of these water power rights are sold from time to time, [16976] and that is the yardstick on the basis of which they are purchased and sold.

TRIAL EXAMINER: When you say you assisted the purchaser in that sale, what do you mean?

THE WITNESS: I mean that he engaged me to go up there and look over the property and talk it over with him and consider why he might want to buy it, because he happened to have some money that he would like to put into that property which is a water power four miles above where he already owned one, one of the oldest water powers in New England, owned by the Union Water Power Company in Lewiston, Maine. It is a canalized project, one of the earliest canalized water power developments, and they felt that the market for power was growing, and they should put themselves in the position to own some additional rights which they might develop if they desired to. Actually, they did not develop it, and in 1924 they sold it, and sold it at a very substantial profit, and at that time again I was engaged to determine—

TRIAL EXAMINER: Well, before we get to 1924, did you make the determination of the \$325,000 as a valuation?

THE WITNESS: No, that isn't exactly what I did. In all these cases they are mostly, you might say, horse-trading propositions. You determine about the maximum that you would pay for the property, and then, by trading [16977] back and forth, you buy it for as much less as you can. That is really what it amounts to.

TRIAL EXAMINER: What valuation did you put on it, for the purchaser?

THE WITNESS: I don't recall now, but more than that. I didn't make any memorandum of the actual valuation.

TRIAL EXAMINER: You mean \$325,000 was the actual purchase price?

THE WITNESS: That was the actual purchase price which was finally arrived at by trading. The International Paper Company owned a great many water power properties on that river, some of them developed for paper mill purposes. At that time they decided they were not going to build any more paper mills on the river and they would just as soon get rid of the property. The other fellow thought he would like to own the property, because he thought he might be willing to use it. It was a trade which was certainly made between people who knew what they wanted to do, and knew about that kind of property. That is, they were well informed about the property.

TRIAL EXAMINER: Was that property owned directly by the International Paper Company or a subsidiary?

THE WITNESS: No, sir, directly by the International Paper Company.

By Mr. HALL:

[16978] Q. Mr. Uhl, I believe you have stated that, for the purposes of your determination, you assumed that all the land required for the project, as contemplated as of March 1, 1905, were under single control? A. Yes, sir.

Q. Now, is it a fact that all the lands and rights required for the project were under single control as of March 1, 1905? A. I do not know.

Q. Well, isn't it a fact that additional parcels of land, other than that under the control of Hutchinson, McCall Ferry, as of March 1, 1905, were employed for the Holtwood project? A. To the best of my knowledge and be-

lief, they actually owned enough to raise the dam later to 165, and did build a dam to elevation 165, Crest Elevation 165.

Q. You are saying that to the best of your knowledge and belief, as of March 1, 1905, McCall Ferry had under single control all the land actually acquired for the ultimate development of a project with an output of 165,000 horsepower? A. Yes, and other lands besides, to the best of my knowledge and belief, which were later released.

Q. Now, if that were not the case, your valuation [16979] would be affected, would it not? A. If they did not have sufficient, you mean, to make a development to Elevation 155! Yes, sir.

Q. Under single control. A. Yes, sir.

Q. It would affect your determination? A. Yes, indeed.

Q. Do you know when the properties which had not been acquired as of March 1, 1905, were actually acquired?

* * *

A. I didn't know there were any properties that had not been acquired as of March 1, 1905.

By Mr. HALL:

Q. Then, I take it from what you have said, that you do not know whether your determination of \$3,300,000 includes lands acquired after March 1, 1905? A. I have no knowledge.

Q. For the purpose of your study, were you furnished data showing the actual consideration paid for land and water rights involved in the project, or for any portion thereof? A. No, sir.

Q. Do you know the actual consideration paid for each [16980] tract of land that was acquired for the project?

Mr. KING: By whom, Mr. Hall? By anybody?

Mr. HALL: By anybody, or in particular by McCall Ferry.

A. I have no knowledge of that.

By Mr. HALL:

Q. Mr. Uhl, did you investigate the prices at which Susquehanna River properties were being sold in the early part of 1905? A. Do you mean complete properties or parcels of land?

Q. Well, did you make an investigation for a complete project? A. Yes.

Q. At the actual cash price at which they were sold? A. No. Oh, no, I thought you said whether there were any others.

Q. Well, were there? A. No, sir, as far as I could determine, there were not.

TRIAL EXAMINER: No other what?

THE WITNESS: Any other complete water power properties.

MR. KING: You mean on the Susquehanna River?

THE WITNESS: On the Susquehanna River. The lower Susquehanna River.

[16981] By Mr. HALL:

Q. Were there any individual parcels of land sold prior to March 1, 1905, leading to the development of a water power site? A. Yes, the record shows a great many transactions had taken place.

Q. What was the actual consideration? A. I didn't look into that.

Q. Were you furnished with a tabulation showing the lands and water rights involved in the Holtwood project?

MR. KING: As of what time, Mr. Hall? Any time?

MR. HALL: As of March 1, 1905, or any time.

A. The best of my recollection is that I did see some tabulations. Whether it was for all the parcels or—

By Mr. HALL:

Q. How many acres were involved in that project? A. I don't know.

Q. Did you ever know? A. In the Holtwood development?

Q. Yes. A. Yes, I think I do know.

Q. You can tell us how many acres of land was involved in the project itself? A. Yes.

Q. How many? [16982] A. I don't know whether I can for Elevation 155. I can for Elevation 165.

Q. As I understand it, your valuations related to Elevation 165? A. No, sir, it is based on Elevation 155.

Q. But you do not know the acreage involved in the development of project at Elevation 155? A. No.

Q. Did you ever have that information? A. I may have had. I don't recall.

TRIAL EXAMINER: Did you use it in any way in connection with your \$3,300,000 figure?

THE WITNESS: No, sir, I did not.

By MR. HALL:

Q. Using your approach to a fair market value determination, Mr. Uhl, would the number of acres required affect your fair market value determination? A. Only very indirectly.

Q. Incidentally? A. Very incidentally. The only effect it would have would be to give me information with regard to the pondage involved.

Q. Is your determination of fair market value affected in any way by the nature of the interest held, that is, whether the land was owned in fee or whether only a flowage [16983] right was had? A. Well, if the flowage rights were perpetual, it wouldn't make any difference.

Q. Did you determine the facts in that respect? A. No, sir.

Q. Does it cost as much to acquire a limited flowage and right over land as it does to acquire the fee? A. That I couldn't tell you. That might be different for every case. I couldn't tell you that.

Q. From your last answer, I take it that you do not know whether you would place the same market value on a limited flowage right over a tract of land as on the actual fee or title to the tract? A. Well, I would have to know what you mean by "limited flowage rights," Mr. Hall.

Q. I am talking about a flowage right as distinguished from fee type.

MR. KING: What do you mean: an easement?

MR. HALL: Just exactly what I said.

MR. KING: Well, the witness said he didn't know what you meant by "limited flowage rights."

MR. HALL: Less than a fee title.

MR. KING: Would that cover a permanent easement? Would you consider that a fee title?

TRIAL EXAMINER: The witness may consider all those [16984] matters. He is capable of doing so.

A. I have already said that if the easements were perpetual, it wouldn't make any difference.

By MR. HALL:

Q. Mr. Uhl, does your estimate of fair market value of lands and water rights required for the project include the lands required for the relocation of the Columbia and Port Deposit Railroad tracks? A. No, sir.

Q. Do you know from whom the lands used for that purpose were acquired? A. Yes, I know that a contract was made with the railroad to—

Q. That wasn't my question. Do you know from whom the lands used in connection with the railroad were acquired? A. No, sir.

MR. KING: You mean from whom the railroad acquired the land?

MR. HALL: The witness understood, I think, Mr. King.

MR. KING: I don't think it is clear in the record,
Mr. Examiner.

TRIAL EXAMINER: What did you understand by the question, Mr. Witness?

THE WITNESS: Well, I didn't quite understand it, [16985] because, to the best of my knowledge and belief, the railroad owned the land, and had owned the land. But if there was any additional land required to raise the railroad, I didn't take that into consideration.

By MR. HALL:

Q. Did your valuation for land include the land required for the Holtwood Village? A. No, sir.

Q. Do you know from whom and when that land was purchased? A. No, sir.

Q. Mr. Uhl, did you, during the course of your study, locate any records indicating the total investment of the project, including land and transmission lines, as of September 30, 1911?

MR. KING: By Penn Water, you mean?

MR. HALL: I mean the total investment in the project as of that date.

MR. KING: By whom, though?

MR. HALL: The total investment that had been incurred in connection with the project up to that date. Does that make it clear?

MR. KING: By anybody?

MR. HALL: Yes.

A. I have a figure of \$13,609,191.

[16986] By MR. HALL:

Q. Where did you get that figure? A. Well, I don't recall, but—

Q. Well, you got it from the records of the company, did you not? A. The records of the company, somewhere.

Q. Did those records show as of the same date, September 30, 1911, the total investment in the power plant alone, exclusive of the lands and transmission lines? A. Yes.

Q. What did they show as the cost, exclusive of the lands and transmission lines? A. \$10,670,000.

Q. Now, the difference between the 13 million and the 10 million dollars is \$2,939,000, approximately; is that right? A. That is approximately right.

MR. KING: Mr. Examiner, might I suggest this time for the mid-morning recess if it is agreeable to Mr. Hall and Mr. Goldberg?

MR. HALL: May I just finish this?

MR. KING: Certainly.

TRIAL EXAMINER: Very well.

By MR. HALL:

Q. How much of the \$2,939,000 represents investment in [16987] transmission lines? A. I don't think I have that information, Mr. Hall.

Q. Do you have any way of determining at this time approximately what part of the \$2,939,000 represented investment in transmission line? A. Well, the previous year, December 13, 1910, the item I have for transmission lines is \$1,128,381.

Q. Will you repeat that figure, please? A. \$1,128,381.

By MR. HALL:

Q. Does that figure of \$1,128,000 include the cost of substation and related equipment for the line? A. I think it does, but I would have to check on that to be certain.

Q. Mr. Uhl, before the recess, we had under consideration the investment of the project as of September 30, 1911, and you had mentioned the fact that the records [16988]

indicated that \$2,939,000 represented the cost of lands and transmission lines, and you had also stated that your information indicated that of the \$2,939,000, \$1,128,381 represented cost of transmission lines. How much of the \$2,939,000 represents value assigned to securities issued in part payment for property? A.-I don't know.

Q. Did you make any investigation to determine that fact? A. No, sir.

Q. How much of the \$2,939,000 represents cash paid for land? A. I do not know.

Q. Did you make any investigation to determine that fact? A. No, sir.

Q. This \$2,939,000 included not only the property upon which you placed a value of \$3,300,000 as of March 1, 1905, but all additional land acquired by McCall Ferry up to September 30, 1911; isn't that so? A. I think I would like to have that question read.

TRIAL EXAMINER: Read the question.

(Question read.)

MR. KING: Mr. Examiner, may we have it understood, to save time, that when Mr. Hall refers to value, that he [16989] means market value?

MR. HALL: I mean fair market value.

MR. KING: Thank you.

MR. HALL: That is, when I am referring to \$3,300,000, I am referring to the fair market value as used by the witness?

MR. KING: Thank you. I had assumed you were.

A. Well, if that figure includes all the land, what you say must be so.

By MR. HALL:

Q. Do you have any reason to believe that it does not include it? A. No, I have no reason to believe that it doesn't.

Q. Now, instead of approaching the valuation of lands and water rights as you have done, for only a part of the property on which you place a valuation of \$3,300,000, why did you not break down the figure of \$2,939,000 to determine the portion thereof which was paid for all the lands and water rights acquired as of September 30, 1911? A. Well, I was asked to determine the market value of the lands and water rights.

Q. Not the cost? A. That is right.

Q. Mr. Uhl, did you confer with any individuals responsible for the acquisition of lands and water rights by McCall Ferry Power Company for the Holtwood project, in [16990] making your determination of \$3,300,000? A. No, I didn't confer with them.

Q. During the course of your study, did you find any documentary evidence reflecting an engineering valuation as of March 1, 1905, of \$3,300,000, for the Holtwood land and water rights? A. No.

Q. Did you find an engineering valuation made on or before March 1, 1905, which placed any valuation upon the Holtwood lands and water rights? A. No.

Q. On page 15453 of the transcript, lines 17 through 22, you have defined the fair market value of property as follows:

“Fair market value is defined as the price which would be accepted by the owner if he was willing but not compelled to sell, and which would be offered by the purchaser if he was willing but not compelled to take the property, and both were intelligent and fully informed as to the property itself.”

Can you state it to be a fact that those representatives of McCall Ferry responsible for the acquisition of the property on which you placed a valuation of \$3,300,000, were willing to pay that much cash for the property? A. I am not in a position to state that, no, sir.

Q. In other words, the \$3,300,000 is a valuation which [16991] you today think McCall Ferry would have been

justified in paying for the property? A. Either McCall Ferry or someone else.

MR. KING: In 1905, you mean, Mr. Hall?

MR. HALL: In 1905, yes.

[16992] By MR. HALL:

Q. And as I understand it you think now you would have given that advice to McCall Ferry in view of what you considered to be the value of the property to the company or anyone else for power purposes? A. I believe I would have so informed them.

Q. Did you discover that any person actually offered \$3,300,000 in cash for the Holtwood land and water rights, in 1905 or earlier? A. No, sir.

Q. Do you know of any cash offer for the Holtwood water power rights in 1905 or earlier? A. No, sir.

Q. In your opinion, Mr. Uhl, would not a prudent investor, before spending \$3,300,000 for the property on which you placed your valuation, assure himself that his proposed development would result in reasonable earnings on his total investment in the project?

* * *

THE WITNESS: If he bought it for the purpose of making a development, yes. However, he might of course purchase it for re-sale.

[16993] By MR. HALL:

Q. Well, the re-sale feature was not involved in connection with the Holtwood site; isn't that so? A. Well, it didn't turn out to be that way. But as far as I am concerned I wasn't interested in arriving at that value, whether they did or not.

Q. Assuming that there were no prospects that the project would ever show any earnings after operating expenses, would a prospective investor, in your opinion, be willing to pay more than a nominal amount for the lands and water rights which you valued?

MR. KING: What is a "nominal amount?"

MR. HALL: Well, he wouldn't be willing to pay more than real estate value or farm land value.

THE WITNESS: Well, he probably wouldn't pay anything for it. I wouldn't think he would pay anything for it.

By MR. HALL:

Q. In your opinion, wouldn't an investor be willing to pay more for the property if the estimated earnings from its use were greater than operating expenses? A. Yes, it all depends upon what he thought he could make out of it, or what he could do with the property.

[16994] Q. Isn't it a fact that, using your approach, no determination of fair market value of property could be made without a consideration of the probable revenue and operating expenses of the project in their relation to the plant investment required and the cost of competing power? A. Consideration of those elements certainly would have to be given.

Q. And considerable weight would have to be given to those elements? A. Yes, it is one of the elements which is important.

Q. Am I correct in stating that you have previously testified that your valuation of the Holtwood lands and water rights involved the application of certain engineering factors? A. Yes, sir.

Q. You have testified that there were 10 principal engineering factors considered by you in arriving at your determination, the first of which was "market for power output, its extent and distance from the site of the development."

Why did you consider that an important engineering factor to be considered in making your determination? A. Well, if there was no market for the power output naturally there would be no value to the property.

Q. For power purposes? A. For power purposes.

Q. Now, the fact is did you consider it in connection [16995] with market for power output?

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MR. KING: I object to the question as being unintelligible.

THE WITNESS: I don't understand it, Mr. Examiner. If I might have it once more.

TRIAL EXAMINER: Never mind.

By MR. HALL:

Q. Mr. Uhl, I simply mean this: What did you consider, in connection with market for power output? What elements? A. I considered the fact that a great deal of power was being developed by steam power in the surrounding territory and at great cost at that time, and that if water power could be developed at a reasonable cost the output from it could be sold in that market, not only the existing market but a rapidly growing market. The facts show that the power market was developing very rapidly at that time, and ever since.

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Q. I take it, Mr. Uhl, from your last statement, that that consideration contributed to your determination of fair market value of \$3,300,000? [16996] A. Yes, very largely—that there was a market for the power output.

Q. Now, precisely what effect did the market available for the output of the project have upon your determination of \$3,300,000? A. It was one of the principal considerations in determining that there was market value to the property.

Q. Could you tell me, in terms of dollars, how much your \$3,300,000 figure was affected? A. No, I couldn't tell you that.

Q. Mr. Uhl, assuming that there is an available market, what difference does it make, in so far as your determination of fair market value of lands and water

rights is concerned, whether the market is adjacent to the site or is located 60 miles away? A. It doesn't make any difference.

Q. You have stated that your first element was "market for power output, its extent and distance from the site of the development." Now, how did the last part, "its extent and distance from the site of development," enter into your determination? A. Simply that it would cost less to deliver the power where it was wanted if the distance was short than if it was a long distance, generally speaking. That might not always be true.

[16997] Q. And that all enters into the economic feasibility of the project? A. That is right.

Q. And of the delivery to the market? A. That is correct.

Q. In other words, the difference involved in "its extent and distance from the site of the development," among other things, is the cost involved? A. Yes, it makes a project more desirable if the conditions are favorable.

Q. Mr. Uhl, what amount of power output did you have in mind for the Holtwood project when you made your determination? A. The amount of power which I had in mind was that ultimately 165,000 HP would be economically developed at that site.

Q. What power surveys, contract negotiations or power contracts were given weight in your determination of the fair market value of the Holtwood water rights? A. None.

Q. Do you mean by that that you were not concerned at all with whether or not any contract negotiations— A. Yes, I was concerned with the fact that contracts could be made for the output.

Q. You were concerned with it, but not to the extent of what actually happened; is that right? [16998] A. Yes, if I had information of anything that actually happened to a purchaser, but at that time there wasn't any

development there, as of March 1, 1905. All there was there was the land and water rights. Now, whether or not the prospective purchaser had a contract or not didn't interest me particularly.

Q. Well, were you interested in whether or not there was a prospective purchaser available? A. Yes, of course.

Q. Were you interested in whether or not there was a prospective purchaser actually negotiating for power? A. Well, I knew that that was a fact. Not only a prospective purchaser of this site but of various water-power sites, on the lower Susquehanna. Historical records show that various people were trying to make contracts for output from possible developments on the lower Susquehanna River.

Q. Who were they? A. Well, there was a gentleman by the name of Harlow.

Q. Was he interested in developing power or in buying it? A. He was interested in both.

Q. What would he have done? A. He was the gentleman who tried to promote a water-power project on the lower Susquehanna River.

Q. To what use would he have put the power which you [16999] say he was interested in purchasing?

MR. KING: The witness hasn't said Harlow was interested in purchasing the power.

TRIAL EXAMINER: Let the witness answer.

THE WITNESS: He was interested in marketing the power in the surrounding territory.

By MR. HALL:

Q. But was Mr. Harlow interested in buying power developed by someone else? A. No, sir. He was interested in combining water-power sites and purchasing lands, and making contracts for possible sale of power which he might develop.

Q. Now let me get back to my original question. Who were the prospective purchasers actually negotiating for the power to be developed at the Holtwood site? A. Purchasers of power?

Q. Yes. A. I think the records show that the public utility interests in Baltimore particularly were interested in purchasing power developed at some site on the Susquehanna River, not necessarily the Holtwood site.

Q. Well, what was the nature of their negotiations for the acquisition of that power? How far had they gone? [17000] A. They had made tentative contracts, I believe.

Q. Well, now, are you sure of that fact? A. Yes. I have seen some.

Q. And those contracts were entered into prior to March 1, 1905, for power to be developed at the Holtwood site? A. That is correct. Yes, sir.

Q. What information did you have as to the probable quantities and prices at which the power output could be sold? A. The records again show that discussion had taken place for sales to be made at \$20 to \$30 per HP.

Q. What quantities of power are you now referring to? A. Well, some of them were say—one that I recall was 4,000 kw.; one for 10,000 kw.; one for 20,000 kw. They were various amounts.

Q. Does your last answer relate to the negotiations between McCall Ferry and Consolidated and the railroad? A. Yes, that particular answer did, but there were also, as evidenced in the history, other interests besides the McCall Ferry Power Company who were negotiating for the sale of power from possible developments on the Susquehanna.

Q. So that you considered it reasonable to assume that the [17001] Holtwood power could be disposed of on terms similar to the arrangements finally agreed to in the initial contracts which were carried out with Consolidated of Baltimore and the united railway interests? A. Yes, I

assumed that satisfactory contracts could be made for the output from a development that might be carried out at Holtwood.

Q. The second engineering factor which you have testified you considered was "competitive sources of power." Just how did this factor enter into your determination of the fair market value of the Holtwood lands and water rights? A. It entered in this way: That there was other water power available on the Susquehanna River, and also the fact that the power at that time was largely made by steam. Naturally, if there was another power site available in the same territory which showed better prospects of development that would be a very competitive situation. Or, if there was some immediate prospect of a cheapening of steam power that would be something to be taken into consideration. In other words, what would be the chances of having someone else take the market, the prospective market, away from the possible development of a site.

Q. In other words, Mr. Uhl, in arriving at your determination of \$3,300,000 you compared the cost of producing power at the Holtwood project with the cost of producing the [17002] same amount of power by steam? A. I made no direct comparison, but I knew that power could be made at less cost at that time by water-power development at that or some other site on the Susquehanna River than could be made by steam power in the adjacent territory.

Q. And although you did not make any direct comparison, in reaching your conclusion you did consider the cost of developing steam power as related to the cost of the Holtwood project? A. Yes. I knew it would cost more to make power by steam, at that time, than it would cost at the Holtwood, or than I believed it would cost at Holtwood.

Q. How did the cost of producing competitive steam power compare with the probable cost of producing hydro power at Holtwood? A. I didn't make any calculations

of that kind. My general knowledge of the situation at that time didn't make it necessary to make such a calculation.

Q. Didn't you make estimates of the cost of producing steam power? A. I did not. No, sir. I mean in this particular case, in this situation.

Q. But you gave consideration to the cost— A. Oh, yes. I knew what the cost was to make steam [17003] power in those days.

Q. What did you consider to be the probable cost of producing hydro power at Holtwood? A. I know that the development could be made for about \$100 a HP, at least, which was a low cost for water power; that during those days any water power which you could make at between \$100 and \$200 a HP was a good development.

Q. Now will you tell us what the comparable figure was for producing steam power? A. That varied very greatly, of course, with the size of the—

Q. What was the maximum and minimum amount?

A. The cost of steam power plant, in those days, was about \$40 to \$50 a HP. But the cost of producing power was very high. It took from three to four pounds of coal per kilowatt-hour, and the operating costs were very high because the units were very small. The steam turbine was just in its experimental stage. There were very few in operation, and those purely experimental, which made the operating cost of steam plants extremely high.

Q. What load factor did you consider in connection with the \$100 per HP for hydro power? A. I didn't consider any load factor in detail, except that a probable load factor was in the nature of 50%.

Q. What cost of the production of hydro did you consider, [17004] per kilowatt-hour? A. I have already stated that I considered that the development there could be made for \$100 a HP.

Q. Is that the cost of investment per horsepower?
A. Yes.

Q. Well, I had in mind the prices at which power could be sold. A. Well, the price at which power could be sold would be whatever the market would bear; not what it cost to make power but what you could sell it for.

Q. What cost of production did you have in mind, per kilowatt-hour? A. Well, if you wished to, if it cost about \$100 a HP, the production costs wouldn't be over \$10 a HP.

Q. And that is an estimate you make without reference to actual figures? A. Oh, yes. Anyone familiar with that kind of thing should know that.

Q. How did the \$10 figure which you just gave us compare to the steam figure which you considered? [17005] A. I considered that the producer of steam power would be glad to pay at least \$30 a HP—\$20 to \$30—for power in those days.

Q. Does the \$10 per HP depend upon extreme flow characteristics? A. Oh, yes.

Q. And in reaching your \$10 valuation did you consider stream flow characteristics? A. Yes.

Q. And that is stream flow characteristics of the Susquehanna River? A. That is correct.

TRIAL EXAMINER: To what degree?

THE WITNESS: To the degree that I knew that they would have to make contracts, where the purchaser of the power would probably have to hold his steam plant in reserve, or where he would have to build an auxiliary steam plant in order to continuously produce the full amount of water power.

TRIAL EXAMINER: How deeply did you go into that?

THE WITNESS: Well, not in detail. It was just done generally, I think. No river, no matter how well reservoired, always has the same amount of water in it, so you have to make provision for low flow.

[17006] Q. Mr. Uhl, before the noon recess, we had under consideration the engineering factors upon which you relied. Proceeding now to the third engineering factor which you considered, which reads "Extent of engineering information available regarding the site of the project," how did this factor enter into your determination? A. Principally with regard to the availability of definite information, such as the characteristics of the dam site and the flow of the stream to be developed. There was a good deal of information available in connection with the lower reaches of the Susquehanna River—much more so than generally is available in connection with the earlier studies of water-power projects.

Stream flow measurements had been carried out for some time, and the river had been used for navigation purposes [17007] for a great many years, which made people familiar with its behavior and also some water power had already been developed on the river for industrial purposes, and in the particular location for the proposed Holtwood dam, a suitable foundation could be viewed and studied, and also it was known that suitable material for concrete for building the project was available near the site.

Those are the kinds of things that I had reference to when I spoke of the engineering information available regarding the site.

Q. Was all the information to which you have just referred available as of March 1, 1905? A. Yes.

Q. Did you take into consideration any information or data which came into existence after that date? A. No, sir.

Q. You didn't consider any such data? A. No, sir.

Q. The fourth engineering factor which you considered was natural advantages and disadvantages of the site. How did this factor enter into your considerations? A. The natural advantages which were evident were the fall in the river, and the fact that the sound rock foundation was available, and also that a not excessive amount of

land would be flooded out by making the development.

[17008] The particular dam site location was suitable in so far as the width of the river at that point made it possible to build a dam with sufficient spillway area to take care of floods, and also to build a power plant. Also, in that particular location there was about five feet of fall in a very short distance which meant that a dam could be built which was somewhat less in height than the head which would be developed. There were certain disadvantages, one of which was the railroad relocation made necessary, and the other which at that time was considered somewhat serious by some engineers was the fact that ice conditions are sometimes bad on that river.

There was also the fact that there would be, or at least there was at that time, no proposed storage, up-river storage in prospect and that river, in its natural state, was somewhat fluctuating. Those were the disadvantages that I considered.

Q. The fifth factor which you considered was "Probable costs of construction." Why did you deem this to be an important factor in determining the fair market value of the project, lands, and water rights? A. Because some sites are rather questionable because of bad foundation conditions and other risky situations, such as lack of availability of suitable construction materials, and the distance from railroads which [17009] would make transportation expensive. Some forms of foundations, such as limestone foundations, are very expensive to make watertight, and in this particular case, everything in connection with the cost of construction, as far as could be determined, was favorable. A foundation of good, sound rock was exposed, and, as I say, construction material was readily available, the railroad was nearby, the country was developed, it was within an area of availability of labor for construction purposes—all those things showed that construction conditions were favorable from a cost standpoint.

Q. What did you consider to be the probable cost of constructing the Holtwood project? A. I think I have already stated that I believed that the development could be made there in the lower ranges of general cost of hydroelectric developments at that time, of about \$100 per horsepower.

Q. What does that make the total investment cost in the project? A. That would depend upon what to develop there, what the prospective purchaser might want to develop.

Q. What did you consider to be the probable development? A. I considered that an ultimate development of 165,000 horsepower would be suitable.

[17010] Q. And what did you consider to be the total investment on that basis? A. As I said, about \$100 a horsepower, if the whole development was immediately made, which, of course, would not be the case.

Q. Well, how much in dollars? How much would the total investment be in dollars? A. I wouldn't be able to say. That would depend upon what the prospective purchaser intended to do, how much of the power he proposed to develop immediately and how quickly.

Q. And you gave that no consideration; is that what you are saying? A. Not the extent of development, no. Simply that a reasonable amount of power could be developed such that it could be marketed.

Q. Mr. Uhl, doesn't the over-all cost of a project have a bearing upon the economic feasibility of that project? A. Yes, sir.

Q. Well, didn't you determine, during the course of your study, what would be the over-all investment in the project? A. Well, I couldn't say how large a development a prospective purchaser might make, so I couldn't possibly [17011] estimate that.

Q. How did you arrive at the hundred dollars per horsepower value? A. Because I said the conditions were favorable towards a low cost development at that

point. And experience showed that, with conditions favorable, that is about what it would cost to make a hydro development.

Q. Well, in order to conclude that it was a low cost development, was it not necessary for you to calculate what the probable over-all cost would be? A. No, sir. I know that I ~~knew~~ from conditions that it would be within the lower ranges of cost of hydro-electric development such as they were being carried out at that time. And I was familiar with a great many of them.

Q. As I understand what you have said, the hundred dollars per horsepower valuation is a judgment determination which is not or was not subject to mathematical calculation? A. Well, if I had known just what kind of a development a prospective buyer would make there, I could have made an estimate of it. But it wasn't necessary for my purposes to do that.

Q. Mr. Uhl, would not what the prospective buyer intended to do have a bearing on what he was willing to pay for the lands and water rights? [17012] A. No, I don't think so. A prospective buyer might even buy it and not develop it at all.

Q. But that was not the type of buyer you were dealing with in connection with your evaluation of the Holtwood lands and water rights? A. Any kind of a buyer. As far as I was concerned, it could be any kind of a buyer.

Q. Are you saying that a buyer who is going to do no more than hold onto the lands, would pay \$3,300,000 for the lands? A. That was my opinion, yes, sir. He could afford to pay that much.

Q. Would a buyer, in your opinion, be willing to pay that amount if he had no intention of selling it for power purposes?

MR. KING: Might we have that question read?

THE WITNESS: I don't think I understand it.

By MR. HALL:

Q. Well, is it your statement, Mr. Uhl, that a willing buyer would be willing to pay \$3,300,000 for the sole purpose of keeping the land in his own ownership without development for power purposes? A. Yes, if he thought he could sell it.

Q. That wasn't my question. A. Well, that would be the only possible reason he [17013] would buy it. If he didn't intend to make the development himself, he would buy it for the purpose of selling it to someone.

Q. You are saying if he is buying it for resale, he is buying it for the purpose of reselling it for power development, in other words? A. Very likely.

Q. Mr. Uhl, isn't it a fact that the amount of horsepower which a purchaser will develop has a bearing on what he is willing to pay for the necessary lands and water rights? A. It might and it might not. If he had in mind developing it himself, he probably would have in mind a certain size development, at least to begin with. He might increase it as time went on, just as that did happen at Holtwood.

Q. And those probabilities he would take into account in determining what he would be willing to pay? A. Yes; it depends upon the market conditions at the time. If he thought he could market 50,000 horsepower, he would undoubtedly develop it for that. If he thought he could market a hundred thousand horsepower, that is what he would develop it for. Practically all hydro developments are made with increased installations in view when they are first made. At least, they were in those days, and [17014] they still are, a great many.

Q. Mr. Uhl, you recognize, do you not, that there is a point beyond which the willing purchaser would not go because of consideration of the economic feasibility of the project; is that not so? A. In his mind, yes. Of course, different people have different ideas about what they can do with a property.

Q. What initial development was this willing buyer contemplating? A. I don't know.

Q. That would have a direct bearing on the hundred dollars per horsepower, would it not? A. Yes, if he made too small a development, the initial cost would probably be more than a hundred dollars per horsepower.

Q. Isn't it a fact that if your hundred dollars per horsepower is based upon a development of 165,000 horsepower, that initial installation of 50,000 would mean considerably more than a hundred dollars per horsepower; isn't that right? A. That is right.

Q. Do you know how much more? A. No. It would still be within the lower ranges of cost of hydro development at that time.

[17015] Q. Mr. Uhl, what determines whether a hydro project is economically feasible? A. Principally whether there is a market for its use. That is really the principal consideration.

Q. And you have reference to a market for power at reasonable prices? A. Of course.

Q. And reasonable profits? A. Why, I don't know what a reasonable profit might be.

Q. A reasonable return on the investment. A. Well, I think if I made a development, I would certainly want to be sure that the income was a little larger than the outgo.

Q. What you mean -when you say "a little larger than the outgo," you mean a reasonable return? A. Yes. But, of course, different people have different ideas about what a reasonable return is.

Q. Mr. Uhl, what would the willing buyer have considered a reasonable return for the Holtwood project in 1905 when he was considering buying the land? A. I wouldn't know. That would depend again, as I say, upon who did the dreaming, if you want to call it that. Of course, every promoter must have a good dream in order to have the courage to promote any kind of a project.

Q. The sixth engineering factor that you considered [17016] was pondage and storage possibilities.

Why did you consider this factor in arriving at your determination? A. Because both pondage and storage possibilities affect the use you can make of the flow of the stream. There should be sufficient pondage, so that during low flow conditions, the water could be held back for use at times when it is most valuable. And, of course, if storage could be developed, it would increase the low flow of the stream. Those are the reasons why pondage and storage possibilities must be considered.

Q. Just what effect did this factor have upon your determination? A. Well, if there had been storage possibilities at reasonable cost, the market value undoubtedly would have been higher.

Q. You say if it had or had not? A. If it had. If the storage possibilities were available at reasonable cost, it would have enhanced the market value.

Q. You mean the greater the storage possibilities, the higher you would have fixed the fair value of the land?

A. That is correct.

Q. The seventh factor you considered is "stream flow characteristics."

[17017] Why was it necessary to consider this factor in arriving at your determination? A. Because the more constant the flow of the stream is, the greater the amount of prime power you could depend upon, whereas the more fluctuating it is, the less prime power could be depended upon, and, therefore, it would affect the standby power that is required to market the total output.

Q. The eighth factor you considered was "Time When the Development May be Carried Out."

What, in your opinion, is the importance of this factor in arriving at the fair market value of lands and water rights involved in the Holtwood project? A. Well, at Holtwood or any project, for that matter, if the market conditions are such that the development would not be jus-

tified for some time in the future, you would have to discount the market value of it at the particular time. If you have a situation where the existing market and the market immediately ahead is such that the development is warranted immediately, or soon after the time we are talking about, why, then, you wouldn't have to discount it.

Q. If I understand what you are saying— A. In other words, the present value of something in the future comes into the picture.

[17018] Q. And as I understand what you are saying in this connection and in connection with the other engineering factors that you relied on, the more favorable those engineering factors, the higher price you would fix, and the less favorable, the lower price you would fix? A. That is right.

Q. What date of completion did you have in mind when you made your determination? A. I didn't have any exact date in mind. I had in mind that the market conditions were such that immediate development would be warranted.

Q. What date of completion did you have in mind for the Holtwood project? A. Well, some two or three years, four years, something of that order. As near as anything of that kind can be estimated. Something that would be done in the near future, and not ten, five to ten years away.

Q. No, wait a minute. Assume that they had started construction on March 1, 1905. How long would you have estimated it would have taken to construct the property? A. Two to three years, I would say.

Q. Mr. Uhl, when you spoke of a period from two to three years, were you referring to 165,000 horsepower development? A. No, sir, I was referring to whatever initial [17019] development would be made.

Q. Would that be about 50,000 horsepower? A. Well, that is what the McCall Ferry people had in mind. I didn't figure on exactly 50,000 horsepower. I figured on

some reasonable amount of power, 50,000 to 100,000 horse-power, in that order, as an initial development I believed that the market would have warranted such a development, as quickly as it could be carried out in those days. Naturally, the hundred thousand horsepower wouldn't come into use at the same time. It would be one unit after another, as projects like that are actually carried out.

Q. Did you consider when the additional units would be installed? A. Well, it looked to me as though they could be installed, not as fast as they would want to, but probably the whole 165,000 horsepower would be installed in the course of ten years.

Q. Was the conclusion that you have just stated influenced by what you know actually transpired with reference to the Holtwood development? A. Well, I can't put facts out of my mind. Just what I would have known in 1905 and 1906, I can't tell you. I have tried to put myself in that position.

Q. I recognize that it is difficult to divorce [17020] from your mind— A. Subsequent events have transpired, and I knew about them. To what extent they influenced my thinking, I can't tell you.

Q. The ninth factor you considered was "Possibility of Financing." How did this factor influence your determination? A. Well, I knew that about that time everybody was falling all over themselves trying to finance those kinds of properties. That was my own personal experience that I am familiar with. I knew that with a situation that looked as favorable as this one, they would have no trouble in financing the project.

Q. When you refer to "everybody," do you mean people— A. Bankers. I am talking about bankers. At about that time there was a great deal of development going on, and the power situation was developing very fast, and large projects were being carried on all over the country, coast to coast. Minnesota, Washington, California,

Niagara Falls, all over, down South, everywhere. They had no difficulty in financing any of them at that time.

Q. And they were financing them by selling bonds and giving stock as "sweeteners" or as bonuses? A. Various ways.

[17021] Q. Including that? A. Including that, yes, sir. They had to make it attractive because the risk was great. They had to even go to England for some of the money in some of these cases.

Q. And that is why financing was not done through cash sales of common stock, because of the large risk involved; isn't that so?

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A. Well, of course, I can't say, because I doubt if any two cases were exactly alike. I suppose in some cases common stock may have been sold for cash considerations, and in others not, as far as I know.

By MR. HALL:

Q. Do you know of any instance where the project was financed by the sale of common stock for cash? [17022] A. Common stock for cash only?

Q. Yes. A. No, I personally don't know of any case.

Q. Mr. Uhl, what business were you engaged in from 1901 to 1905? A. In 1902, do you mean?

Q. From 1901 to 1905. A. Well, I graduated from college in 1902. In 1901 I went to college. In 1902 I started in doing water-power work. And have stayed in it ever since.

Q. Well, let me put my question in this way: what work were you engaged in from 1902 to 1905? A. In water-power work.

Q. That covers a multitude— A. Designing and selling equipment, machinery that was used in water-power work.

Q. That substantially covers what you did during that period? A. Yes, sir.

Q. You were working for equipment manufacturers?
A. That is correct.

Q. Do the terms of financing have any effect on fair market value of lands and water rights? A. Not as far as I can see.

Q. You mean that you can think of no terms related [17023] to financing, which would have an effect upon fair market value of lands and water rights, using your approach? A. No, I can't see how there is any relation between the two.

Q. Then, what was the purpose of considering possibilities of financing? A. Well, if it was impossible to finance a project, it would be very difficult to imagine anybody wanting it. Where were you going to find a willing buyer if there wasn't a possibility of financing?

Q. You recognize, of course, that bankers could insist upon certain terms which would have an effect upon what a prudent man would be willing to pay; isn't that so? A. Well, I don't know. He might not have to go to a banker to finance the purchase of water rights.

Q. How about in the case of Holtwood? A. Well, I don't know. I don't think they did, as a matter of fact. I think the people who promoted it were very wealthy people.

Q. Who do you refer to as having promoted this project? A. Dr. Cary T. Hutchinson.

Q. And you think he was a well-to-do man, financially? A. I know he was. I knew him very well myself.

[17024] Q. You did? A. Oh, yes.

Q. Personally? A. Oh, yes, indeed.

Q. He was in control of this project, wasn't he? A. Promoter of it. He promoted it, not in the very beginning, but the man who finally promoted it and got it all together, as I understand.

Q. For the purposes of your determination, did you give any consideration to the financial arrangements whereby the money for the project was actually obtained?

A. No, sir, only in so far as I considered the project sufficiently attractive so that I believed that no trouble would have been encountered in financing it.

Q. That was an assumption on your part without going back and ascertaining the detailed facts? A. Only my general knowledge of the fact that many similar projects had been financed without difficulty in those days.

Q. My question, Mr. Uhl, was that for the purposes of your determination, did you give any consideration to [17025] the financial arrangements whereby the money for the Holtwood project was actually obtained? A. No, sir.

Q. You did not? A. No, sir.

Q. In your opinion, would the willing buyer of the lands and water rights give consideration to the rate of interest he would have to pay for his money? A. He might not have to obtain any money. He might spend his own money.

Q. Assuming that he did have to obtain money, would he give consideration to that fact? A. If he had to carry it for any length of time, yes, I think there is no question about that.

Q. And do not the fixed charges on funded debt affect the cost of the project?

MR. KING: Just a minute. What do you mean by "cost of the project"?

MR. HALL: I mean the cost of constructing the project.

A. Yes, interest during construction is one of the [17026] items that you have to consider in actually constructing a project.

By MR. HALL:

Q. And that, in turn, has a bearing upon the cost per kilowatt hour? A. Yes, the cost of the project, and consequently anything that is done with it.

Q. From your acquaintance with Hutchinson, do you know whether or not he was financially able to construct this project without going and seeking money from other sources? A. I wouldn't think that he would have considered assuming all the risk involved personally, even if he had the money. I don't think he had enough money, but I am not sure. But I can't conceive of any one man taking such a risk alone.

Q. Mr. Uhl, the tenth and last principal factor which you have testified you considered was the "Yearly cost of producing the estimated output." What do you consider to be the yearly cost of producing the project output? A. I think I previously said something in the order of \$10 per horsepower.

Q. What is the nature and amount of the yearly cost which you considered? [17027] A. The things that enter into it are—

Q. Well, will you identify those "things"? A. Interest, depreciation, taxes, insurance, maintenance, operation, and administration.

Q. And did you determine what each of those elements were? A. No, sir.

Q. Are you referring to \$10 per horsepower per year? A. Yes, sir.

Q. Mr. Uhl, we have reviewed these ten individual factors which you have considered. Would you, in a general way, concisely as possible, tell us, step by step, how you arrived at the fair market value of the lands and water rights which you valued as of March 1, 1905?

MR. KING: Might I inquire of Mr. Hall if he asks the witness to repeat all of the cross examination up to now?

MR. HALL: No. I want him to give us a concise statement as to just his mental processes in arriving at these amounts. He has told us the items he considered. Now, I am wondering if he could state, concisely, the different steps.

A. I considered all the factors that I could think of, to satisfy myself that a project could be constructed from a physical point of view, at a reasonable cost, at a cost in [17028] the lower ranges of water-power cost, at the time. And that the annual cost of the power, or, rather, the difference between the annual cost of the power and the price—

TRIAL EXAMINER: I think you are repeating something. I think what counsel is interested in is the mechanics of the \$3,300,000.

THE WITNESS: I am getting to that, sir.

TRIAL EXAMINER: Can't you get to that without repeating what you have said before?

THE WITNESS: I will come to it shortly. I am getting to the picture.

TRIAL EXAMINER: I think it sounds like repetition of the previous testimony.

MR. HALL: I agree, Mr. Examiner.

MR. SPARKS: Well, Mr. Examiner, I just got through hearing Mr. Hall ask for his mental processes. I think that is what the witness is trying to give.

TRIAL EXAMINER: I can't imagine counsel asking for a repetition.

MR. SPARKS: Well, I can imagine it, Mr. Examiner, after nine months of this.

A. I came to the conclusion that there was a sufficient margin between the probable cost and the probable income from this power so that I could relate it—

TRIAL EXAMINER: Mr. Witness, I don't know whether [17029] you are proceeding under an implied suggestion of your counsel or my suggestion. But I wish you would adopt mine.

THE WITNESS: I am going to do that right now.

That margin which made me able to relate it to actual sales of other water-power sites. That is what I am coming to. And since none of these projects are exactly alike, yet there is considerable similarity, one must weigh the various differences and as nearly as possible relate this to actual sales and purchases of water rights. And, having done that, having considered all those factors, I arrived at what I considered a proper value of these water rights.

TRIAL EXAMINER: Now, then, how did you—

THE WITNESS: Based on actual purchases and sales of other water rights.

TRIAL EXAMINER: Then, how did you get the figure of \$3,300,000?

THE WITNESS: By arriving at a figure of \$20 a horsepower, which is in the lower ranges of actual sales of water rights. In my experience, in actual participation in purchases and sales, they have ranged all the way from \$10 a horsepower to \$150 a horsepower for undeveloped water rights, on the same comparative basis, and I have considered that, taking all these things into consideration, \$20 per horsepower would be something a willing buyer would pay for [17030] it, which would give him sufficient margin to go ahead and make a development, and assume all the risks necessary if he wanted to make the development, or to buy it and hold it for a time and perhaps sell it to someone else.

TRIAL EXAMINER: Now, then, where did you get your \$20 per horsepower?

THE WITNESS: From these actual purchases and sales which I spoke of.

TRIAL EXAMINER: Now, will you give the dollars per horsepower for each one you considered?

THE WITNESS: Yes, I will be glad to give you that.

I considered Clark's Rip on the Androscoggin River, which was purchased in 1909 at \$19 a horsepower.

Clark's Rip was again sold in 1924 for \$39 per horsepower.

It was also determined by the Internal Revenue Department of the United States Treasury that the value of those rights in 1913 was \$27, because, in the purchase or sale of this water power, which was bought in 1909, it was necessary to determine the profit that the company made in 1913 at the beginning of income taxes.

The purchaser of those rights in 1924 added to it some additional rights, and brought the cost of the undeveloped site to \$42 per horsepower, the same site.

On the Kennebec River, at Solon, in Maine, the purchaser, [17031] whom I represented, paid for those water power rights \$30 per horsepower.

TRIAL EXAMINER: When was this?

THE WITNESS: In 1931.

TRIAL EXAMINER: And where?

THE WITNESS: Solon, Kennebec River, Maine. He sold those rights again in 1936 for \$45 per horsepower.

Rams Island water rights, on the Androscoggin River in Maine, were purchased in 1931 for \$10 a horsepower. I assisted the purchaser in that case.

At Milton, Vermont, on the Lamoille River, the purchaser, the Public Electric Light Company, bought the rights in 1926 for \$22 a horsepower.

On the Green River in Vermont, the Green Mountain Power Company, in 1928 purchased the water rights there for \$65 a horsepower. These same rights were sold to the Village of Morrisville in 1945—and I assisted the purchaser—for \$79 per horsepower.

The water rights at Palmer's Falls, on the Hudson River, New York, were purchased in 1931 for \$138 a horsepower. The water rights at Winooski, Vermont, on the Winooski River, were sold in 1941 by the American Woolen Company to the Green Mountain Power Company for \$40

a horsepower. I assisted the seller, American Woolen Company, [17032] in that transaction.

At West Enfield, on the Penobscot River in Maine, the water rights were purchased in 1927 by the Bangor Hydro-electric Corporation for \$20 per horsepower.

At Franklin Falls, on the Winnepeaukee River, the water rights were purchased in 1931 for \$16 a horsepower and were sold again in 1945 for \$34 a horsepower.

At Berlin on the Androscoggin River in Maine, the water rights were purchased in 1945 for \$15 a horsepower.

Union and Cataract Falls, on the Saco River in Maine, in 1928 the water rights were purchased for \$22 a horsepower.

And at the Rockaboma Rip on the Penobscot River in Maine, the water rights were sold in 1922 for \$20 a horsepower.

Those are all transactions in which I participated, and then of course I participated in a good many developed water powers. These were all undeveloped water powers.

TRIAL EXAMINER: Just land and water rights?

THE WITNESS: These I mentioned were all just land and water rights. As I say, I did participate in a great many where they were developed.

TRIAL EXAMINER: Where did you get your horsepower figure?

THE WITNESS: Horsepower is calculated horsepower. [17033] The horsepower basis that I deal with is based on a flow in a stream available 20 to 25 per cent of the time. Most all developments in the last 35 years—at least those used for public utility purposes—have been made on about that basis. In other words, that is a common yardstick.

None of these figures are calculated figures. They are trade figures; that is, between buyer and seller.

By MR. HALL:

Q. Is this some more of the horse trading that you have referred to? **A.** Yes, sir. Nobody pays any more

for them than they have to, and everybody tries to get as much for them as they can. Just like they do for everything else.

Q. In connection with the transactions that you mentioned, was the consideration always paid in cash? Do you know? A. No, I don't know.

Q. In other words, the consideration may have been in securities, so far as you know? A. Well, as far as I know, that is not so. In none of these cases that I mentioned, I don't believe there were ever any securities involved. They were out and out sales.

Q. Do you know, for instance, what consideration passed for the Clark's Rip property at Lewiston, Maine? [17034] A. I am sure about that. There were no securities involved.

Q. All cash? A. Well, there might have been notes. I can't tell you that it was all cash. There might have been notes. But I mean there were no securities involved, I know that.

Q. What were the terms of the notes? A. I don't know about that.

Q. Were they long-term or short-term notes? A. That, I can't tell you. You see, I don't know as there were any notes. But I said there might have been. But I am sure there were no securities involved.

Q. But you are not sure of that with respect to all the transactions that you mentioned? A. No, I am not sure about it.

Q. Mr. Uhl, as I recall, in the figures you gave, there was a range from \$15 to \$138 per horsepower. How did you arrive at the \$20 per horsepower? A. As I say, that was in the lower ranges of actual purchases and sales, and in 1905 not so much was paid for water power rights as later on. Those that I mentioned, where the consideration was greater, had peculiar advantages attached to them, such as in the case of Palmer Falls, a precipitous fall of—I have forgotten how much now, but 60 or 70 feet, so that

a small dam in practically [17035] no distance at all would provide a very large head, and also the fact that there was a good deal of storage on that river, and right in the midst of a very good market. Some of the lower figures that I gave you were in connection with developments where there was no immediate prospect of development. In other words, they were discounted figures because of future development.

Q. Is the number of feet of fall per mile an important consideration in the valuation of land and water rights, using the approach you did? A. Well, it may be, as in the case of Holtwood, it is quite an important consideration. Again, it might not be. It might be a disadvantage. If the fall was too rapid, the pondage might be too small, without flowing too much land.

Q. Mr. Uhl, in connection with the Clark's Rip project on the Androscoggin River, you stated that in 1909 it was sold for \$19 per horsepower, whereas in 1924 you stated that it sold for \$39 per horsepower. A. That is right.

Q. What caused the increase? A. Well, there are two things which caused the increase between 1909 and 1924. A substantial amount of storage was developed in the upper reaches of the river. The other element that came into it was that there was a [17036] greater demand for the power. The purchaser bought it for immediate development, whereas the original purchaser bought it for possible development.

Q. What are or what were the points of similarity between the Clark's Rip project in 1909 and the Holtwood project in 1905? A. Well, it was—

Q. Specifically, what was it? A. A good dam site was available; the land had all been assembled; a substantial amount of pondage was available. On the other hand, the prospect of immediate development wasn't as far ahead on the Androscoggin as at Holtwood, the cost per horsepower would probably have been somewhat more on the

Androscoggin than at Holtwood. The head was somewhat less.

Q. Where? A. On the Androscoggin.

Q. Now, all these projects that you have referred to were sold as complete water-power projects? A. Oh, yes, complete water-power projects.

TRIAL EXAMINER: What do you mean by that?

THE WITNESS: Well, sufficient land and water rights so that the development could be made without the purchase of additional land and rights.

By MR. HALL:

[17037] Q. And the valuations that you have referred to were based upon the use of the land for water-power purposes? A. Yes.

Q. Mr. Uhl, was the power market available for the Clark's Rip project similar to that available to the Holtwood project? A. Not in 1909. It was in 1924.

Q. How about 1905? A. In 1905 there was less market near the Androscoggin River project than there was near the Holtwood project.

Q. Mr. Uhl, which of the sales to which you have referred took place within a period of time which you would consider reasonably contemporaneous with the date of March 1, 1905? A. Well, naturally, the first one that I participated in, which was in 1909.

Q. And that is the only one; is that right? A. That is the nearest one, yes.

Q. That is the only one anywhere that you consider reasonably contemporaneous with Holtwood; isn't that right? A. Yes, as far as period of time is concerned, that is correct.

[17038] Q. Mr. Uhl, in the case of Holtwood what water rights, if any, were acquired, separate and apart from the land acquisitions? A. I don't know.

Q. Mr. Uhl, you have used the phrase "water rights." A. Yes.

Q. What is your definition of "water rights?" And what do you include under that definition? A. I include under that definition riparian lands, and [17039] in some cases riparian lands may or may not include the bed of the stream. In some cases it does, and the water rights include all the riparian lands, and, if the stream bed is separate, also the stream bed. All lands and rights necessary to build a dam and flow the land which would be flowed by that dam.

Q. Now, "water rights" as you have used it includes the right to build the dam; is that right? A. That is right.

Q. Does it include preliminary engineering? A. I don't understand your question.

Q. Well, does it include necessary permits and licenses? A. To build a dam?

Q. Yes. A. Yes.

Q. In making your determination, what consideration, if any, did you give to the necessity of obtaining from the federal government a license to construct a project? A. There was no occasion for it in 1905.

Q. In your opinion. A. In my opinion and in my knowledge.

Q. You know that— A. The river was declared non-navigable in 1904, I know that.

Q. By whom? [17040] A. By the Secretary of War.

Q. You know, of course, that Penn Water has now been required to take out a license for the Holtwood project?

A. That is right. But there was no Federal Power Commission in 1905.

Q. Well, are you familiar with the requirements of the law in 1905 with respect to the construction of hydro projects? A. Yes, I think I am reasonably familiar with it.

Q. You know that there was a Rivers and Harbors Act, do you not? A. Yes. And I know that the river was declared non-navigable in 1904.

Q. And that is why you considered that you did not have to take into account whether or not it was necessary to obtain a license from the federal government? A. Oh, well, I assumed that everything necessary to make that development was existent, in arriving at that value.

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Q. Mr. Uhl, I show you at this time a document containing 15 numbered pages, dated March 18, 1946. Is that the report which you prepared and submitted to Penn Water in connection with your determination of the fair market value of the land? [17041] A. Well, I wouldn't call it a report; no. It is a memorandum which I wrote.

Q. And submitted to Penn Water? A. And I did submit copies of it to them.

Q. And that is the only report that you did submit to Penn Water? A. That is, as far as I recall, the only report.

Q. And that document is entitled "Estimate of Fair Market Value, as of March 1, 1905, of the Lands and Water Rights Required to Carry out the Holtwood Hydroelectric Project Development of the McCall Ferry Power Company and Now Owned by the Pennsylvania Water & Power Company"? A. It is.

Q. Did you make any independent investigation and verification of the historical information contained in this document relating to the history of the Holtwood project, the cost of its plant, its operations, the date of commercial operation, and so forth? A. Only in so far as I studied these two documents that we spoke about this morning, which I think are Exhibits 26 and 27.

Q. And the power market surveys, consisting of 68 separate documents. A. Yes.

Q. In other words, you accepted the facts as stated in those [17042] documents for the purpose of writing this document? A. Yes.

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[17043-A] RE-DIRECT EXAMINATION

By MR. KING:

Q. Mr. Uhl, this morning while you were being cross examined, I believe you made some references to contracts prior to March 1, 1905. Will you explain what you meant by that reference? A. I didn't say so. I meant to say that there were negotiations for contracts. There weren't actually contracts, but negotiations for contracts were being carried out.

Q. Prior to March 1, 1905? A. Yes.

[17045] RE-CROSS EXAMINATION

By MR. HALL:

Q. Mr. Uhl, you referred to negotiations for power contracts that were carried out prior to March 1, 1905. Specifically, just what negotiations did you refer to? A. I would have to refer to my working papers.

Q. You may do so. A. There is a report, so-called Warfield's report.

Q. What is the date of that report? A. Dated August 5, 1901.

This is a letter from the General Electric Company to Mr. Thomas J. Hayward, in which he refers to conversations regarding furnishing electric current from the Susquehanna River to Philadelphia Company.

Q. Who is this individual to whom the letter was addressed? [17046] A. He is a gentleman connected with the General Electric Company, Mr. Mullen.

Q. To whom was that letter addressed? A. Mr. Thomas J. Hayward of the firm of Bartlett, Hayward and Company.

Q. Where was that firm located? A. 100 Broadway, New York.

Q. Was that individual connected with the Holtwood project? A. He was connected with the General Elec-

tric Company; was a co-promoter of this project, you might say. They were interested in promoting this project.

Q. You mean General Electric was interested in promoting the Holtwood project? A. Yes.

Q. With Hutchinson? A. What was that?

Q. Was a co-promoter with Hutchinson? A. They were helping to promote it, yes.

Q. Helping Hutchinson? A. Yes.

Q. Was C. A. Coffin president of General Electric at that time? A. I believe so.

Q. Here is a letter dated February 19, 1910, from Mr. L. B. Stillwell, a consulting engineer, to Mr. Warfield [17-047] of Baltimore, President, Continental Trust Company, in which the advantages of taking power from the Susquehanna River are brought forward.

[17048] Q. Wasn't Mr. Warfield interested in a development in the vicinity of what is now Conowingo? A. No, I think he was interested in the utilities in Baltimore.

Q. And not the development of hydro power? A. I think he was only interested in the use of the power and not in the development of power, as I recall it.

Q. Was either Mr. Stillwell or Mr. Warfield connected with the Holtwood project? A. I think Mr. Stillwell is one of the engineers who made some reports on the Holtwood project.

Q. Now, these references which you have just made were the ones you had in mind when you stated that negotiations were being carried on prior to March 1, 1905; is that right? A. I think there were others. I would have to search for them more carefully. I know there are a good many references to the power market and negotiations for power.

Q. Are those two the only references you can put your hand on right now? A. Well, if you give me a little more time I think I can find some others. I would have to go through them one by one because it is so long since I have studied them.

Q. Without going any further, Mr. Uhl, these two negotiations, or these two documents to which you referred, are the only ones you have been able to find so far?
[17049] A. So far, yes.

[17056]

GEORGE W. SPAULDING

CROSS EXAMINATION (Resumed)

By MR. WAHRENBROCK:

[17070] Q. I would like to ask you now if you will describe with some particularity all of the facilities owned by Penn Water which are actually used in the process of local distribution? A. Is that not in my testimony?

[17071] Q. Not the detailed description. There is a reference, a general reference to facilities; but I want to find out just what the facilities are.

Your testimony appears on transcript 16608 and 16609.

THE WITNESS: And we are speaking of what they own today?

By MR. WAHRENBROCK:

Q. Whatever period of time was covered, or whatever date was covered by your testimony on rebuttal. A. I would be glad to do so with the understanding, of course, that I am speaking from an operating point of view, and not from a legal point of view when I use the words "Distribution facilities".

There are facilities in the Holtwood power house and part of the Holtwood Development that are used in part for what we refer to as local village use, and by that I am referring to the use of electric services by the residences of company employees and the company buildings generally constituting the village.

Then, as a part of those facilities, is the connection to the distribution circuit of Pennsylvania Power and Light Company which formerly was owned by the Pioneer Electric Company, the predecessor of Pennsylvania Power and Light Company.

[17072] The facilities in the Highlandtown Station owned by Susquehanna Transmission Company of Maryland and consisting generally of step-down transformers from 66 KV to 13 KV with an extensive 13 KV indoor bus arrangement with large numbers of 13 kv cable connections.

The outgoing cables from just inside the building line are owned by Consolidated Gas Electric Light and Power Company of Baltimore and constitute connections to their extensive 25 cycle distribution system.

Generally Baltimore Company owns those cable facilities from outside of the property into and including the potheads, the connections from the potheads back toward the bus being owned by S. T. Co.

There are several metering units generally referred to as metering facilities owned by the company, and by the "company" I am referring to Penn Water, that are a part of the distribution facilities of Pennsylvania Power and Light Company, such metering facilities being located in the latter company's substations.

Q. The latter company being Pennsylvania Power and Light Company? A. That is correct. There are certain facilities of the Pennsylvania Railroad at Conestoga substation which is a jointly occupied substation by Penn Water and the Pennsylvania Railroad near Safe Harbor, the control facilities for both Penn Water transmission facilities, the Pennsylvania Railroad [17073] transmission facilities and part of the railroad distribution facilities being owned and operated by Safe Harbor Water Power Corporation from the latter's control room at Safe Harbor.

Then there is the 119 kv Gunpowder line carrying two circuits.

Q. Excuse me. My question relates to facilities used in the process of local distribution. A. I have that in mind. This tower line and its transmission lines extending from the Philadelphia Road substation of Baltimore Company near Highlandtown substation of S.T.Co., but not electrically connected therewith and extending from Philadelphia Road to Gunpowder Switching Station, a distance of about nine miles, the tower line and circuits are owned by S.T.Co., are operated by S.T.Co., from a maintenance point of view, but from an electrical point of view are operated by Baltimore Company and are therefore used by Baltimore Company in connection with its transmission and distribution facilities in Baltimore County and the outskirts of Baltimore City.

I think I stated that these latter facilities are owned by S.T.Co. rather than by Penn Water. Those are all I recall at the moment.

[17151] Q. We are somewhat uncertain what the figures in the fourth column of figures on Exhibit 354, under the heading "PW&P, 60-cycle 220 KV, 25-cycle 132 KV" represent, and I would like to ask you to explain what those figures represent. A. They are the amounts of kilowatt hours determined on a net hourly basis, which are sent out in part over the 220 KV transmission system of Penn Water from Safe Harbor towards Baltimore and Washington, plus certain net hourly amounts that are sent out from Safe Harbor, over the 132 KV 25-cycle single phase circuits, to the railroad, and which are transmitted by the railroad to Benning, District of Columbia, and converted from 25-cycle single phase to 60-cycle three-phase.

Q. Mr. Spaulding, I think you said kilowatt hours; actually the values are in megawatt hours, are they not?

A. That is correct.

[17188] Q. What did you mean when you referred to certain facilities of the Pennsylvania Railroad as distribution facilities on Transcript 17,073? A. I don't have that page of the transcript here.

Q. Then I show you a copy of the transcript referred to. [17189] It is at the top of the page. A. I was referring to the transformer facilities and the circuit arrangements which the Pennsylvania Railroad Company owned in Conestoga substation for stepping the voltage down from 132 kv. to 12 kv. and for the use of their trolley service.

Q. Do I understand that the Railroad serves ultimate consumers such as householders or small commercial establishments or industries? A. No, it is for their own use on their own trolley, but it is for the purpose of distributing their electric services to their trains, wherever they may be.

Q. That is a somewhat different use of the word "distribution" than is normal in the practice of public utility engineers. A. No. From a technical point of view that is distribution when you distribute the energy in electric services—

* * *

Q. Is it your testimony that from an operating electric utility engineer's viewpoint the 110 Kv. transmission line from the Philadelphia Road substation in Baltimore to the Gunpowder substation in Maryland is used in the process of local distribution? A. I think it could be so looked at because it is part of the distribution system of Consolidated Gas Electric Light and [17190] Power Company of Baltimore.

Q. When you say that you think it could be so looked at, do you mean it is ordinarily not so looked at? A. No, I did not intend to so mean. I meant that perhaps one engineer would classify it as transmission facilities and another engineer distribution facilities.

Q. I thought you testified on your direct that it was a transmission facility used exclusively by Baltimore Company as a part of that company's transmission network supplying an area in Maryland outside of Baltimore.

THE WITNESS: I did so testify.

[17216] Q. Let me see if I understand that now. With the exception of these fluctuations in capacity services rendered, which you have stated do affect the amounts billed under Exhibit 382, do I understand that fluctuations in the other electric services which you say are rendered do not affect the dollar amounts of the bills unless power factor falls below .85 or voltage departs more than a specified amount from a stipulated figure? A. That is correct so long as it is understood that the services could not have been rendered except that these other services were provided at Safe Harbor and Holtwood plants.

Q. Do I understand you, then, as saying that the rendition of these other services is a necessary incident to the supply of energy for which the dollar amounts are billed? A. Absolutely.

[17270]

H. ZINDER

CROSS EXAMINATION (resumed)

By MR. GOLDBERG:

Q. Mr. Zinder, in your Exhibit 319, page 1, in the second paragraph, you talk about cost as used in your study as including the cost of purchased power and energy. Do you see that? A. Yes.

Q. Does that mean that you have not included the cost of voltage, reactive, power factor cooperation, phase and frequency? A. I was dealing there with costs of power

and energy. In my mind that would include, let me say, any electrical services that were purchased for which a cost was shown on the books of the company.

Q. In other words, it included these elements I mentioned? A. All I can say is that it went into the various services rendered and the cost incurred—various services received and the costs incurred in connection with it, and I [17271] considered those costs.

Q. And that was all covered by this phrase "Power and Energy"? A. That is what I intended to have it cover, yes.

Q. And you intended by that phrase to cover voltage, reactive, power factor cooperation, frequency and the other services; is that right?

* * *

THE WITNESS: I would say yes, all services purchased.

* * *

[17272] Q. Now, I take it that the cost figures you have used in your exhibit or rather the figures you have used as cost in your exhibit have been accepted by you without assuming any responsibility for their accuracy? A. More specifically the cost figures received from the company shown in column 1, Schedule B, Table 1 and column 1, schedule B table 2, I take no responsibility for. I might add the same is true with respect to the cost figures shown on schedule A, table 1, column No. 1 and schedule A, table 2, column 1. Those cost figures were taken from Exhibit 64.

Likewise in that case I take no responsibility for those figures.

* * *

[17310] Q. Now, in that data supplied by Mr. George Diehl, he proposed certain allocations between 25 and 60-cycle equipment of the operating and production expenses; is not that so? [17311] A. Yes, let me get the question again, please, to be sure I have answered it properly.

(Question read.)

THE WITNESS: He indicated what to him might be the basis for allocating certain expenses, production and operating expenses.

By MR. GOLDBERG:

Q. And did you employ the allocations he proposed? A. I employed it by using it as a basis for reaching my own conclusions.

Q. Will you use one of his proposed allocations as an illustration and tell us whether you used that one as he proposed it, or whether you modified it in any regard?

A. I arrived at a judgment figure on an over-all basis of 76 per cent of the hydro plant operating expenses as properly allocable to 25 cycle. Mr. Diehl's memorandum discusses the possibility of a portion of the expenses being on a 75 per cent basis, others on an 80 per cent basis, and I just considered that not item by item but on an over-all basis and I reached a judgment basis of 76 per cent.

Q. Well, your judgment was based upon the information he had supplied you, right? A. As part of the information that I received.

Q. Well, what other information did you have that provided you with a basis for modifying Mr. Diehl's judgment with [17312] respect to the appropriate allocation between 25 and 60 cycle equipment of production and operating expenses?

A. Well, first, I do not know that I modified his judgment. He did not come out with an over-all figure. I do not know what his over-all figure would be if he made such an allocation but it would probably be somewhere between 75 per cent and 80 per cent, if you take his statement here. I have used 76 per cent.

In addition to talking to Mr. Diehl and getting this memorandum, I talked to other plant people.

Q. Who were they? A. Mr. Stabley, T. C. Stabley, station superintendent at Holtwood, and I talked to Mr. Loane.

Q. Were they the only plant people with whom you discussed the allocation of production and operating ex-

penses as between the 25 and 60 cycle equipment? A. Let me put it this way; they were the principal ones I discussed it with, as you recall, Messrs. Diehl, Stabley and Loane.

Q. And what Mr. Diehl told you is embodied in that letter which is part of your working papers? A. Right.

Q. What did you learn from Mr. Stabley with respect to the appropriate segregation of costs as between 25 and 60 cycle equipment, that is production and operating costs? [17313] A. I do not recall exactly what I learned from it. I discussed first of all, with him as I recall, whether he could not segregate his personnel, and how much of his cost he could segregate, how he worked his maintenance program, and points of that kind were discussed. I just used that as part of my basis of arriving at my own judgment in the matter.

Q. Did he segregate his personnel on a 76 per cent basis? A. He stated he could not segregate his personnel as between 25 and 60 cycle operations.

Q. How much of his costs could he segregate as between 25 and 60 cycle operations, did he say? A. I do not recall that he went into what particular items of the production expense he felt could be directly allocated.

I reached a conclusion after discussion with him that as a whole, it could not be done on the basis of getting specific cost records, that it would have to be done on a judgment and allocation basis.

Q. Now, did Mr. Stabley express any judgment as to what percentage of the costs were allocable to 25-cycle and what percentage was allocable to 60-cycle? A. No, I do not recall raising that question with him on an over-all basis.

Q. Now, what did he tell you about how he worked his [17314] maintenance program as it bore on the determination of an allocation of production and operating expenses between 25 and 60-cycle equipment? A. I do not recall specifically on that except that I felt satisfied with the con-

elusion that even maintenance expenses could not be allocated strictly in accordance with the number of units, that the number of units might be a predominating or largely determining factor, but you could not actually say that the maintenance expense would specifically vary in that relationship.

Q. So that is it not fair to state that as far as Mr. Stabley's information was concerned, it did not help you very much in arriving at your judgment allocation of production and operating expenses as between 25 and 60 cycle?

MR. SPARKS: Was it Mr. Stabley or Mr. Diehl?

MR. GOLDBERG: Stabley is the man we have been talking about.

THE WITNESS: I would say it was very helpful to me. Even a negative answer is an answer which is helpful to me.

By MR. GOLDBERG:

Q. When Mr. Stabley told you he could not segregate the personnel as between 25 and 60 cycle equipment, how did that help you in arriving at 76 per cent? A. That helped me reach the conclusion that it would have to be a judgment figure no matter who did it.

[17315] Q. But it did not help you in arriving at what that judgment should be? A. Well, other discussions with him helped me with that.

Q. What other discussions helped you in concluding that they should be 76 per cent? A. I would say my discussions with him as to the general behavior of the production expenses. I would recall that as far as he was concerned, there was a general agreement that an allocation on the basis of number of units, for example, and giving that considerable weight he would agree with, as far as I recall my conversation. He did not give me any final answer. That I reached myself, and I did not, or do not recall asking him for an over-all answer.

Q. What did he tell you about the general behavior of the production expenses that was helpful in arriving at the 76 per cent? A. Take, for example, maintenance. If an allocation was to be made predominating weight would be proper to the number of units involved. I think there was not an identity but a fairly close agreement between Mr. Stabley's views as I discussed them, and Mr. Diehl's views as set forth in this memorandum.

Q. So you got no more out of Mr. Stabley than you got out of Mr. Diehl; is that right? [17316] A. Well, I got something out of both of them. I cannot say how much from one or the other.

Q. All you got out of Mr. Stabley, as I understand it, was that if you were to go ahead on a number of unit bases, he would feel that that was a fair basis; I think that is right? A. I got out of Mr. Stabley, looking at it that way, and I believe this is a supposition—that if I made an allocation of 80 per cent, that would be as high as I could allocate to 25 cycle, and that 75 per cent would be about as low.

Now, I would say that both Mr. Diehl and Mr. Stabley were of the opinion that it might fall within those limits.

Q. Are you saying that Mr. Stabley actually expressed the view that the allocation of production and operating expenses as between 25 and 60 cycle equipment was somewhere between 75 per cent as a minimum and 80 per cent as a maximum? A. No, I did not say that. I answered the question I thought that you put to me, and it required an assumption, and I made the assumption.

Q. But Mr. Stabley never expressed any percentage to you, did he? A. No, and I have said that.

Q. Did you ask him to express any percentage? A. I do not recall.

Q. You were interested, however, in ascertaining what [17317] percentage he might have in mind, right? A. Yes.

Q. But you do not recall whether you asked him that?
A. Right. I might say I was interested in going into the details with him.

Q. Did Mr. Loane express an opinion as to the percentage that might be properly allocable to the 25-cycle equipment and to the 60-cycle equipment of the production and operating expenses? A. Yes, I think he expressed an opinion in our discussions. I am trying to recall now whether it was on an over-all basis or for operation and maintenance separately, but I do not remember.

Q. Do you recall what percentage he expressed? A. No.

Q. So, essentially it was Mr. Diehl's information that you relied on in arriving at your judgment; is not that a fair statement? A. Well, I gave most weight to that.

Q. Even though Mr. Diehl did not arrive at an over-all percentage, did you reach the conclusion in considering the percentages he did arrive at, that they were accurate? A. No, I reached the conclusion that you could not get anything accurate in the sense of knowing exactly what was spent in terms of operation or maintenance on 25 as against [17318] 60 cycle.

Q. Do you know what basis Mr. Diehl followed in arriving at his percentages? A. I asked him to set those down, and they are set down in this memorandum.

Q. Is it your statement that you have in that memorandum sufficient information to enable you to reach an independent judgment as to the percentage allocations expressed by Mr. Diehl?

MR. SPARKS: Is that question clear to you, Mr. Zinder?

THE WITNESS: I think it is.

I interpret the question in this way: Did I rely on that alone, or rather, could I by this alone reach an independent judgment?

By MR. GOLDBERG:

Q. As to the percentages expressed by Mr. Diehl?

MR. SPARKS: Now, Mr. Examiner, just a minute. What is the relevance here of this witness' independent judgment as to the accuracy of the conclusions reached by Mr. Diehl? I see no relevance, and I object to that.

MR. GOLDBERG: I think I can explain that, and it should be obvious. Here is information that he is relying on, and the question is, whether that information is sufficient as a basis for his own judgment.

[17319] MR. SPARKS: That is not the question. If that is it, I have no objection.

MR. GOLDBERG: I will have to ask the questions in my own way.

MR. SPARKS: I think the questions ought to be clear and proper.

TRIAL EXAMINER: The objection is overruled.

THE WITNESS: I felt I needed more than this memorandum to arrive at an independent judgment and sought, and did get more.

By MR. GOLDBERG:

Q. And the more you sought, and did get, is the information that you mentioned that Mr. Stablye gave you, right? A. And discussions with Mr. Loane.

Q. Now, what did Mr. Loane tell you that contributed to your store of knowledge that enabled you to determine what allocations should be made of production and operating expenses as between 25 and 60 cycle equipment? A. He furnished no specific information in terms of dollar figures that I recall. We discussed the problem in relation to the operation of the plant, what he knew of the operation of the plant, what his judgment was and I used that in arriving at my own judgment.

Q. But you cannot remember what his judgment was?

A. No, I do not recall offhand as to what figures—[17320] I did not put them down in writing—that he gave me.

MR. SPARKS: What was the answer, please? I do not know whether it is complete.

(Record read.)

By MR. GOLDBERG:

Q. You do not know whether Mr. Loane's percentage was expressed as an over-all percentage, either, right?

A. No, I do not recall specifically.

Q. Now, what did Mr. Loane tell you about the operations of the plant that helped you arrive at this 76 per cent?

A. I do not recall.

Q. What do you recall about what he told you that helped you? A. I recall we discussed the question of how the plant was operated.

Q. What did he tell you? A. In terms of the labor and employment. He did not go into detail on that.

I also was testing my own tentative conclusions with what conclusions he might have with regard to items. For example, I recall specifically discussing with him also the question as to whether it would be proper in his judgment to separate operation and maintenance and take maintenance on a straight number of unit basis. All questions I thought that would be helpful to me in discussing the problem of what [17321] was a proper basis of allocating that item.

[17488] Q. Do you know how the 25 cycle hydro equipment is operated during periods of extremely low flow? A. No, I do not at the moment recall.

Q. Well, do you know whether or not the 25 cycle hydro equipment during such periods is operated independently of other transactions on the interconnected system? A. I could not answer that. I did not make any study of the matter.

Q. Does that mean that you are of the opinion that in an interconnected system you would expect the 25 cycle hydro equipment to be operated independently of what is occurring on that interconnected system? A. I cannot answer that question. It appears to me to be of a very general nature, and I could not answer that [17489] without more information. I would like to say that in this cost allocation, as I stated at the outset, I took and lifted Penn Water out of the interconnected system and treated it as a single unit, as a single corporation, looking at its transactions and its costs. That was part of the problem to take Penn Water alone, starting with that first basic premise and then determining what was necessary in order to arrive at the costs or Penn Water's costs for service to Baltimore by determining what those services were and what the costs were related to them.

Q. All right. Now, when you lifted Penn Water, as you say, out of the interconnected system and considered it as a self-contained unit, did you restate the operations of Penn Water to meet that assumed condition? A. I made no restatement of operation. I simply took the facilities as I found them. The transactions over those facilities as I found them.

Q. In other words, you took the facilities and the transactions as they are found as part of an interconnected, coordinated system and made a cost allocation based on Penn Water as not being part of that interconnected and coordinated system; is that right? A. That is not so.

Q. Now, when you lifted Penn Water out of that interconnected system and considered it as a self-contained whole, [17490] did you consider the costs in relation to operations of Penn Water as part of an inter-connected, coordinated system? A. I took their costs as I found them.

Q. And they are costs incurred in operating as part of a coordinated interconnected system, right? A. Yes. Now, for my purpose—and by my purpose I mean in con-

nection with determining the costs of service to Baltimore — I was only interested in a portion of those costs:

Now, the 25 cycle costs were not involved in interchange; there was no interchange with respect to 25 cycle 3 phase service. I took the 25 cycle costs as I found them.

Q. Did you determine the relationship of the 25 cycle service to Baltimore to the operations of the interconnected and coordinated system? A. It was not necessary.

Q. You did not do it? A. I did not do it because it was not necessary.

Q. And you did not consider it necessary even though the interconnected system was operated as a unified power pool? A. I would say my answer to that is yes, based upon or in relation to a determination or study such as I have presented here.

* * * //

[17492] Q. On page 3 you say some of the agreements are joint with one or more of these other suppliers with varying degrees of responsibility and obligations on the part of the parties.

Which agreements did you conclude were joint?

* * * *

[17493] THE WITNESS: First let me say that my use of the term "joint" as I stated before is where another party is involved or is a party to the contract. I considered the agreement with the Pennsylvania Railroad as being a joint agreement.

* * * *

[17494] THE WITNESS: I believe that Safe Harbor is a party to the Pennsylvania Power and Light Company contract, to the Metropolitan Edison contract—

By MR. GOLDBERG:

Q. The new one or the old one? Do you have copies of the exhibits before you? If not, I can give them to you because that would help you in answering.

THE WITNESS: All right, if you will.

In answer to your question as to the Metropolitan Edison it appears that Safe Harbor is not a party to the new contract.

By MR. GOLDBERG:

Q. Exhibit 72 in this proceeding? A. I am looking now at Exhibit 72, which is the contract between Metropolitan Edison and Pennsylvania Water and Power Company dated Nov. 15, 1945.

Q. Your reference to Metropolitan Edison was related to Exhibit 71, was it not? A. To Exhibit 71, that is right. Safe Harbor is a party to the Coatesville contract which is with the Philadelphia Electric Company and that is Exhibit 73; and also to the supplemental agreement between the same parties which is Exhibit 74.

Safe Harbor is also a party to the agreement with the [17495] Pennsylvania Power and Light Company, which is Exhibit 76.

[17498] Q. Now, when you say more than one party involved, does that mean you ascertained whether all the parties to the contract were actually supplying energy? A. No, I did not.

[17501] Q. You have never before in your consideration of Penn Water's contracts and Safe Harbor's contracts referred to them as joint agreements; is not that so? A. I do not recall that I ever had or that I haven't. That goes back quite a way when you say "never before".

Q. Up to this proceeding you have been of the opinion that Safe Harbor sold electric energy to only two customers, Consolidated and Penn Water; is not that right?

THE WITNESS: I do not recall that I ever made a conclusion of that character. I do not recall that I have ever been called upon to make one.

By MR. GOLDBERG:

Q. I would like to show you Exhibit "X" in Docket IT-5914, being the Safe Harbor Water Power proceeding, which was Exhibit 18 in Docket No. IT-5494, being the first Safe [17502] Harbor rate case proceeding before the Commission, and to the first page of that exhibit.

That is a report, is it not, on the property, operations and contracts of Safe Harbor Water Power Corporation?

A. That is right.

Q. And that is a report which you signed, is it not?
A. Right.

Q. I direct your attention to the last page thereof.
A. Right.

Q. You signed that at the time you were with the Federal Power Commission and were chief of the Division of Rates and Statistics; is not that so? A. Yes, sir.

Q. Now, referring to page 1 of that report, the first paragraph, you say there, don't you:

"The energy generated at this plant is sold under long term contracts to the Consolidated Gas Electric Light and Power Company of Baltimore and to the Pennsylvania Water and Power Company."

THE WITNESS: That is right, as an introductory statement.

By MR. GOLDBERG:

Q. I shall get to the others, Mr. Zinder. The plant you were there referring to was the hydro-electric generating [17503] plant of Safe Harbor Water Power Corporation, is not that right? A. That is right.

[17509] Q. Referring to page 14 of that exhibit, the second paragraph, you there state, do you not:

"Besides the generation of electric energy in the hydroelectric and steam plants at Holtwood, the com-

pany purchases one-third of the output of the Safe Harbor plant."

A. That statement appears on page 14 of the document which you have handed me.

Q. Is there any doubt in your mind you were there referring to Holtwood Company?

* * *

THE WITNESS: The company there referred to is the Pennsylvania Water & Power Company.

* * *

[17513] Q. Now, referring to page 39 of that same document under the section entitled "Other System Contracts," this statement is made, is it not:

"In addition to the contract for the construction and operation of the Safe Harbor Plant, the Safe Harbor [17514] Water Power Corporation is a party to several other contracts and agreements. These contracts do not provide for any direct sales by Safe Harbor for, as previously pointed out, its entire output is sold to the Baltimore and Holtwood Companies. However, these contracts are important to Safe Harbor as they have affected the design, construction and operation of the plant to a considerable extent."

A. That statement that you read appears on page 39 of the document under the heading, or under the major heading of "Other System Contracts" and the subheading "Pennsylvania Railroad Company Contract."

Q. Referring to page 40 under the subheading "Other Contracts," of this section that we are talking about, there are listed the—I better read it, rather than paraphrase it. This appears, does it not:

"The Safe Harbor Water Power Corporation is also a party to several contracts for the supply of electric energy and power to certain other utilities operating in the State of Pennsylvania. Most of these con-

tracts were originally entered into by Holtwood, but in recent years Safe Harbor has become a party thereto, although the agreements are carried out principally by Holtwood and Safe Harbor might be said to be a silent partner." That appears there, right?

[17515] A. That appears at the point you designated in the document.

Q. And then the contracts are listed on page 40 continuing over to the top of page 41, right? A. Certain contracts are listed following that statement on page 40 and continuing on page 41, yes.

Q. These contracts are listed as the contract of May 1, 1933, between Penn Water, Safe Harbor and Pennsylvania Power & Light Company for the supply of electric power and energy to the Lancaster System of P. P. & L.; the agreement of June 11, 1934, between Penn Water, Safe Harbor and P. P. & L. relative to the Safe Harbor-Donegal connection and the facilities to be provided by each party; as well as the letter agreement of April 28, 1939, between Penn Water, Safe Harbor and P. P. & L. relative to the provisions in the above contract pertaining to the parallel operation of the Lancaster Division with the main system of P. P. & L. Company and for the furnishing of certain other services, as well as the contract of August 1, 1933, and the supplement of December 13, 1938, between Penn Water, Safe Harbor and Philadelphia Electric Company for the supply of electric power and energy to the Coatesville System of Philadelphia Electric Company and, finally, the contract of January 1, 1935, between Edison Light & Power Company, Met Edison and Pennsylvania Water & Power Company and Safe Harbor for the supply of energy and power to York, [17516] Pennsylvania, and vicinity, isn't that right? I have correctly described the contracts that are listed as the "Other contracts" on pages 40 and 41, right? A. That is a statement of the contracts listed under the statement you read appearing on pages 40 and 41 of the document.

Q. Now, following the description of these contracts on page 41 you state, do you not:

"As previously pointed out, although Safe Harbor is a party to these contracts and furnishes a part of the power and energy, the actual sales are made by Holtwood which collects the revenue."

A. That statement appears on page 41.

Q. And on page 44 under Section 8 entitled "System Power And Energy Transactions In 1938" and the sub-heading "Safe Harbor to Baltimore and Holtwood," you state:

"As previously brought out the Safe Harbor Company sells its entire output under a long term contract to Baltimore and Holtwood."

A. That statement appears at the point in the document you designated.

Q. Now then, on page 44 again you show in a tabulation, do you not, sales to Baltimore, Pennsylvania Power & Light, Philadelphia Electric Company, Edison Light & Power Company, and the Pennsylvania Railroad Company of kilowatt hours?

[17517] MR. SPARKS: Where does it say sales, Mr. Goldberg?

MR. GOLDBERG: Let me read what it does say.

"In 1938 Holtwood generated 757,177,000 kilowatt hours and received 332,513,900 kilowatt hours from other systems including the purchase from Safe Harbor which represented 25.2 percent of its total system energy or a total of 1,089,690,900 kilowatt hours available on the system. It disposed of such energy as follows."

By MR. GOLDBERG:

Q. I have correctly read that, right? A. That appears on page 44.

Q. And that is an introduction to a tabulation showing the disposition of that energy to Baltimore, Pennsylvania Power & Light Company, Philadelphia Electric Company, Edison Light & Power Company and the Pennsylvania Railroad, right? A. That is right.

Q. Disposition by Penn Water, right? A. Disposition by Holtwood.

Q. To Baltimore and other customers, right? A. That is right.

Q. Now then, on page 45 this appears:

"In addition to the sales by Holtwood, it participated in several interchange transactions some or all of which involved Safe Harbor energy as follows."

[17518] I have correctly read that, have I not, from page 45? A. That statement appears on page 45.

Q. Following that statement is a tabulation which names Philadelphia Electric Company, Pennsylvania Power & Light Company and Metropolitan Edison and shows point of interchange with these companies as Perryville and Thorndale, Harrisburg and Violet Hill respectively, right? A. That appears after the statement you just read.

Q. Now on page 44 where disposition of the energy by Holtwood to Baltimore and other companies is tabulated, revenue is shown for such disposition, right? A. There is a column headed "Revenue," yes.

Q. And there is a column with respect to the interchange referred to on page 45, the tabulation on page 45 of the exhibit headed "Amount of settlement," isn't that so? A. There is such a column on page 45.

Q. Now then, I want to show you Exhibit 24 in Docket No. IT-5914, which is entitled "Supplemental rate report, property operations and contracts of Safe Harbor Water Power Corporation." You recognize that document, don't you? A. The document looks familiar.

Q. If you look at the next to the last page you find, do you not, that you signed it as Chief of the Division of Rates and Research? A. I see that.

[17519] Q. Now referring to the second paragraph on page 17 of Exhibit 24 in Docket No. IT-5914, this statement appears, does it not:

"Energy generated at Safe Harbor Plant in Pennsylvania is transmitted over these lines into the State of Maryland to the vicinity of Baltimore and Takoma Park where it is sold by Holtwood and Safe Harbor at wholesale to Baltimore."

A. That statement appears on page 17 of the document I have before me.

MR. SPARKS: Now, Mr. Examiner, I object to any further questions and to the last question with respect to what Mr. Goldberg has termed as Exhibit 24 in Docket IT-5914. In the first place, there is nothing to show that that is the exhibit that was put in in that case. Its authenticity is not proved and the same thing is true of this so-called Item X which was, according to Mr. Goldberg's statement, Exhibit 18 in the first Safe Harbor case.

This witness has been and is being questioned about a document which has not been authenticated.

TRIAL/EXAMINER: It has been authenticated to the extent the witness accepts his authorship of it, isn't that right?

MR. SPARKS: But, Mr. Examiner, that hasn't been authenticated to the extent that it is proved that either one [17520] is an exhibit in any other case. All we have is Mr. Goldberg's statement about it.

MR. GOLDBERG: Mr. Examiner, may the witness be withdrawn and I will take the stand and authenticate the exhibits?

TRIAL EXAMINER: I don't think that the description of the document as an exhibit in a prior proceeding is as important as the acknowledgment of the authorship of the statements at some prior date by this witness.

MR. SPARKS: That is all right, Mr. Examiner, if Mr. Goldberg is not going to argue in his brief that in Item X, which is in the record in the Safe Harbor case in Docket IT-5914 Mr. Zinder made certain statements. If he is not going to argue that, then there is no question of authenticity except as they may be documents which Mr. Zinder signed.

TRIAL EXAMINER: Mr. Witness, do you recognize the documents as described by counsel?

MR. GOLDBERG: Both, Mr. Examiner, I take it the items I have referred to as Exhibit X by reference in IT-5914 and Exhibit 24 in IT-5914?

TRIAL EXAMINER: Yes.

THE WITNESS: By recognizing the documents, Mr. Examiner, I recognize the signatures in both cases and do say they are my signatures. The first document I recognize as a report. I still don't exactly recall it in detail.

[17521] TRIAL EXAMINER: Did you qualify each of these documents, do you recall, for admission in a prior proceeding?

MR. SPARKS: You mean did he testify, Mr. Examiner?

TRIAL EXAMINER: That is correct.

THE WITNESS: My best recollection is, and I am quite certain of that, that I did not testify in either of these two proceedings.

By MR. GOLDBERG:

Q. Mr. Dunstan testified in IT-5494 and Mr. Fosdick testified in IT-5914 and sponsored each of those exhibits, is that right? A. That is my impression—

MR. SPARKS: Wait a minute, let's get the question first. I don't think the witness understood the last part of the question.

TRIAL EXAMINER: All right, read the question.

(Question read.)

THE WITNESS: Well, Mr. Dunstan testified with regard to the first in Docket IT-5494.

MR. SPARKS: With regard to that exact document, Mr. Zinder?

THE WITNESS: That I would have to check. I know that Mr. Fosdick testified in Docket IT-5914. My best recollection is I did not testify in either of those dockets or cases.

TRIAL EXAMINER: Now, unless it is absolutely necessary [17522] I do not wish to have counsel taking the witness chair. Is there any other way in which counsel could establish that?

MR. GOLDBERG: Yes, I can bring the official records of the Commission in.

TRIAL EXAMINER: Suppose you do that. You could do that after the luncheon recess.

MR. GOLDBERG: It would have to be after the luncheon recess.

TRIAL EXAMINER: Suppose we proceed on that basis and have the original exhibits produced.

MR. GOLDBERG: Let me inquire, are counsel for the respondents actually questioning the authenticity of the copies I have here as being accurate copies of the exhibits in the official records of the Commission?

MR. SPARKS: Yes, we are, Mr. Examiner.

MR. GOLDBERG: All right.

MR. SPARKS: I don't know whether those documents which Mr. Goldberg has been questioning the